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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,993	03/31/2004	Danilo Lambino	J&J5118	1398

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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

EXAMINER	
BOYER, CHARLES I	
ART UNIT	**PAPER NUMBER**
1751	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/814,993	LAMBINO ET AL.	
	Examiner	Art Unit	
	Charles I. Boyer	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 June 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,7,8,11,14-16 and 19-25* is/are pending in the application.

4a) Of the above claim(s) *21-25* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3, 7, 8, 11, 14-16, 19, and 20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is responsive to applicants' amendment and response received June 7, 2007. Claims 1-3, 7, 8, 11, 14-16, and 19-25 are currently pending with claims 21-25 withdrawn.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The rejection of Claims 1-3, 14-16, 19, and 20 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Slavtcheff et al, US 6,270,783 is withdrawn in view of applicants' amendment and response.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-3, 7, 8, 11, 14-16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al, US 6,550,474.

Anderson et al teach nasal dilators and strips comprising a water-insoluble fabric

comprising a mixture of fragrances, wherein the first fragrance is impregnated in the nasal strip and a second fragrance is encapsulated in microcapsules and is released upon the rupturing of said microcapsules (col. 16, lines 1-34). The preferred microcapsule of the invention is polyoxymethylene urea (col. 13, lines 32-37). The fragrances of the invention are dispensed on the strip in an olfactory effective amount (col. 18, claim 1) and are delivered to the skin in an amount of 10 mg per cm^2 (col. 17, lines 39-43). Additional active agents other than fragrances may be added to these nasal strips including vitamins and medicinal agents (col. 18, claim 6). Though the specific amount of liquid impregnate applied to the substrate is not disclosed, the examiner maintains an "effective amount" to apply 10 mg of active agent per cm^2 of skin is an amount which will overlap the amount of impregnate presently claimed. Though the reference does not specifically teach a combination of free fragrance and polyoxymethylene urea encapsulated fragrance dispensed on a substrate, as these are highly preferred embodiments of the reference, it would have been obvious to one of ordinary skill in the art to make such a nasal strip with a reasonable expectation of successfully obtaining an effective product.

2. Claims 1-3, 7, 8, 14-16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charle et al, US 3,686,701.

Charle et al teach a cosmetic applicator for removing nail enamel comprising rupturable microcapsules (see abstract). The cosmetic applicator may be a napkin or fabric (col. 3, lines 45-49) and the composition is a dispersion of microcapsules in an

aqueous phase (col. 4, example 1). Suitable microcapsules of the invention are formed from formaldehyde urea (col. 2, line 43). Though the specific amount of liquid impregnate applied to the substrate is not disclosed, the examiner maintains the aqueous phase taught in example 1 will result in a wetted substrate, well within the amount of impregnate presently claimed. Though the reference does not specifically teach a combination of dispensed microcapsules in an aqueous phase impregnated on a fabric, as these are highly preferred embodiments of the reference, it would have been obvious to one of ordinary skill in the art to make such a cosmetic composition with a reasonable expectation of successfully obtaining an effective product.

Claims 1-3, 7, 8, 11, 14-16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slavtcheff et al, US 6,270,783 alone or in view of Anderson et al, US 6,550,474.

Slavtcheff et al teach adhesive cosmetic strips for skin treatment (see abstract). An example of such a composition is a nonwoven fabric containing a resin dispersed in water along with microencapsulated cholesteryl ester carbonate which is impregnated in the fabric (col. 8, example 1). Note that these strips contain an adhesive which is dry to the touch, but are wetted before they are applied to the skin (col. 5, lines 1-15). This wetting will more than supply the amount of liquid impregnate presently claimed. The microcapsule material of the reference is not disclosed. First, polyamine microcapsules, particularly polyoxymethylene urea, are extremely well-known encapsulates, are commercially available, and are present in scores of skin treating compositions (see for

example US 5,993,857). Accordingly, it would have been obvious to one of ordinary skill in the art to use a well-known encapsulate in the invention of Slavtcheff et al. It is not inventive to combine well-known encapsulates with a composition containing an encapsulated material.

In the alternative, recall that Anderson et al teach skin treatment compositions comprising polyoxymethylene urea as the encapsulating material of their invention. Accordingly, it would have been obvious to one of ordinary skill in the art to use a well-known encapsulate as taught by Anderson et al in the invention of Slavtcheff et al with a reasonable expectation of successfully obtaining an effective skin treatment product.

Applicants have traversed this rejection on the grounds that the only products for application to the skin described in Slavtchef are adhesive strips that are "dry-to-the-touch" and so the reference fails to teach or suggest any product for use on the skin that comprises a liquid impregnate. As discussed above, the examiner maintains the "wetting" of the adhesive provides ample teaching of adding a liquid impregnate in amounts overlapping the amounts presently claimed. Applicants further traverse on the grounds that the polyamine encapsulate claimed provides superior properties to encapsulates not based on polyamines. Though this would appear to be true with regard to the specific non-polyamine encapsulate tested in applicants' declaration, it does not change the fact that such polyamine encapsulates are very common in the art and would be obvious to use with the invention of Slavtcheff et al.

The rejection of claims 1-3, 5-8, 11, 14-16, 19, and 20 under 35 U.S.C. 103(a) as being unpatentable over Lang et al, US 6,429,261 is withdrawn in view of applicants' declaration and response. The examiner accepts the evidence presented in the declaration that a polyamine encapsulate provides superior properties to the commercially available non-polyamine encapsulate used by Lang et al.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571 272 1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Charles I Boyer
Primary Examiner
Art Unit 1751